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10/743,164

12/22/2003

Edward J. Rupnick

EJR-003

7747

7590

05/20/2004

Charles J. Rupnick  
PO Box 46752  
Seattle, WA 98146

EXAMINER

WILLIAMS, JAMILA O

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/743,164

Applicant(s)

RUPNICK, EDWARD J.

Examiner

Jamila O Williams

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-24 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-22-03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8, 9-19 and 22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8, 19 and 22 are improper Markush format. The alternative expression should read –selected from the group consisting of A, B and C--. As currently drafted, it is unclear what limitations are encompassed (in that “comprising” is open ended). Additionally, in claims 13 and 16 the use of the colon (:) is improper. No punctuation is necessary after “consisting of”. Regarding claims 9 and 20, it appears from the preamble that the applicant is claiming “a book page holder device”. However, in the body of the claim “the support member” (which is part of the book page holder device) is being further limited by a book (hard cover and paperback). It is unclear if the applicant is claiming the “book page holder device” or the combination of a book and the holder device. For the purposes of this office action it will be presumed that the applicant is claiming the book page holder device, and as such limitations towards the book will be treated as merely intended use.

***Claim Objections***

3. Claim 19 is objected to because of the following informalities: In claim 19, there appears to be a portion of the preamble missing. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2,4,5,6,7,8,9,13,14,15,16,17,18 rejected under 35 U.S.C. 102(b) as being anticipated by '128 to White. White discloses a substantially thin, flat and rigid support member (14) having first and second spaced apart edges, an elastic retaining means (52) having means for anchoring (61, see figure 5) first and second opposite ends thereof adjacent the respective first and second spaced apart edges of the support member, as recited in claim 1; wherein the anchoring means comprises one or more hook shaped mechanical edge grippers (fig 5), as recited in claim 2; wherein the support member comprises a substantially rigid material (column 3 lines 48-50), as recited in claim 4; wherein the support member further comprises first and second passages through the support

member adjacent the first and second spaced apart edges with the passages being sized to accept the elastic retaining means therethrough and to reject the anchoring means (fig 3 and 5), as recited in claim 5; wherein one or more of the first and second passages is a slot communicating with an edge of the support member (fig 5), as recited in claim 6; wherein one or more of the first and second passages is an aperture adjacent to an edge of the support member and communicating between opposite surfaces thereof, (figs 3 and 5), as recited in claim 7; wherein the anchoring means comprises one or more mechanical clips (fig 5), as recited in claim 8; wherein the book page holder comprises a support member, an elongated resilient elastic retainer having first and second anchors provided adjacent to respective first and second opposite ends thereof, the anchors being structured to secure the first and second opposite ends of the elastic retainer, as recited in claim 9; wherein the support member is formed of plastic (column 3 lines 48-50), as recited in claim 13; wherein the support member is formed of a rectangular plate including two spaced apart edges (fig 3), as recited in claim 14; wherein the elastic material has a slippery contact surface and having anchoring means on the ends, as recited in claim 15; wherein the anchors comprise a slip on clip (fig 5), as recited in claim 16; a plurality of anchoring means (fig 5), as recited in claim 17; wherein the support member comprises means for compacting the support member (fig 1), as recited in claim 18.

6. Claims 9-10,12 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by '908 to Lykes. Lykes discloses all of the elements of the claims including a substantially flat and rigid support member formed of an elongated bar (bar 7) an elongated resilient elastic retainer (8) extended between the two spaced apart edges of the support and having first and second anchors (9), as recited in claims 9,20 and 21-22; wherein the elastic retainer is structured to pass through the passages of the elongated bar (fig 1-2), as recited in claims 10 and 23; wherein the support member comprises two spaced apart passages adjacent the opposing edges and wherein the passages comprise an aperture formed through the thickness of the support member and positioned adjacent an edge thereof (column 2 lines 46-50) , as recited in claim 12.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. Claims 11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lykes. Lykes discloses all of the elements of the claims but for the use of a slot at the edge of the elongated bar for connecting the elastic retainer thereto. Lykes teaches the use of an aperture in the in the elongated bar (7) but with regards to member (1) slots are used for connecting the elastic retainer (5) to the

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edge of member (1). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a slot (as opposed to an aperture) in the elongated bar of Lykes for the elongated support bar.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of '589 to Schwartz. White discloses all of the elements of the claims but for the use of a fabric covered elastic material. Schwartz teaches using a retaining means that is fabric covered (column 4 lines 41-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the fabric covered elastic material teaching of Schwartz with the retaining means of White for the purpose of providing a more durable retainer.

#### ***Allowable Subject Matter***

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This is simply art of interest and was not used to reject any claims in this office action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila O Williams whose telephone number is 703-305-3312. The examiner can normally be reached on 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'D. Banks', with a large, stylized loop at the beginning and a horizontal line extending to the right.

JW

**DERRIS H. BANKS**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**